

Dated: February 10, 2021.

**Dharmesh Vashee,**

*Acting General Counsel, Federal Retirement Thrift Investment Board.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** General Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces a temporary exception from expulsion for unaccompanied noncitizen children to its Order issued October 13, 2020 suspending the right to introduce certain persons from countries where a quarantinable communicable disease exists.

**DATES:** The temporary exception went into effect on or about January 30, 2021.

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** On October 13, 2020, the CDC Director issued an Agency Order titled 'Order Suspending the Right to Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists' (85 FR 65806; pub. Oct. 16, 2020). The CDC Order was based on the most current information at that time regarding the COVID-19 pandemic and the situation at the Nation's borders. The Order implemented a final rule published September 11, 2020 entitled "Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right to Introduce and Prohibition of Introduction of Persons From Designated Countries or Places for Public Health Purposes" (85 FR 56424). The final rule was effective October 13, 2020.

CDC has decided to exercise its discretion to temporarily except from

expulsion unaccompanied noncitizen children encountered in the United States pending the outcome of its forthcoming public health reassessment of the Order. This temporary exception from expulsion went into effect on or about Saturday, January 30, 2021, and will remain in effect until CDC has completed its public health assessment and published any notice or modified Order. All other terms of the Order, including its application to adults, remain in place until such time as any modified Order is issued.

Separately, on February 2, 2021 the President signed Executive Order 14010, 'Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Through Northern and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border' (86 FR 8267). This Executive Order requires a review of the CDC Order to determine whether the CDC Order should be terminated, rescinded, or modified.

A copy of the Notice can be found at <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDCPAuseNotice-ExceptfromExpulsion.pdf>

#### U.S. Department of Health and Human Services

#### Centers for Disease Control and Prevention (CDC)

#### Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. 265, 268):

#### Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Encountered in the United States Pending Forthcoming Public Health Determination

\* \* \*

Pursuant to its authority under 42 U.S.C. 265, 268, and implementing regulations, and due to the COVID-19 pandemic, CDC issued an Order suspending the right to introduce and prohibiting the introduction of covered aliens travelling into the United States from Mexico and Canada.<sup>1</sup> On November 18, 2020, the United States District Court for the District of Columbia entered a preliminary injunction in *PJES v. Mayorkas* ("PJES injunction"),<sup>2</sup> enjoining the expulsion of unaccompanied noncitizen children pursuant to the Order. On Friday, January 29, 2021, the United States Court of Appeals for

<sup>1</sup> See Notice of Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 85 FR 65,806, 65,812 (Oct. 16, 2020; eff. Oct. 13, 2020), replacing the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, 85 FR 17,060 (Mar. 26, 2020; eff. Mar. 20, 2020), as extended, 85 FR 22,424 (Apr. 22, 2020; eff. Apr. 20, 2020), and as amended and extended, 85 FR 31,503 (May 26, 2020; eff. May 21, 2020).

<sup>2</sup> No. 1:20-cv-02245 (D.D.C.), Dkt. Nos. 79-80.

the District of Columbia Circuit granted a stay pending appeal of the District Court's PJES preliminary injunction.<sup>3</sup>

The current COVID-19 pandemic continues to be a highly dynamic public health emergency. CDC is in the process of reassessing the overall public health risk at the United States' borders and its "Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists" based on the most current information regarding the COVID-19 pandemic as well as the situation at the Nation's borders.<sup>4</sup> Although the D.C. Circuit's stay pending appeal permits the CDC to enforce its order and immediately expel unaccompanied noncitizen children, CDC has exercised its discretion to temporarily except from expulsion unaccompanied noncitizen children<sup>5</sup> encountered in the United States pending the outcome of its forthcoming public health reassessment of the Order. This temporary exception went into effect on or about Saturday, January 30, 2021, and will remain in effect until CDC has completed its public health assessment and published any notice or modified Order. All other terms of the Order, including its application to adults, remain in place until such time as any modified Order is issued.<sup>6</sup>

In testimony whereof, the Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, has hereunto set her hand at Atlanta, Georgia, this 11th day of February, 2021.

**Sherri Berger,**

*Acting Chief of Staff, Centers for Disease Control and Prevention.*

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<sup>3</sup> No. 20-5357, Doc. No. 1882899.

<sup>4</sup> Review of CDC's 265 Order is also directed by Executive Order 14010, Sec. 4(a)(ii)(A), "Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border," Feb. 2, 2021, 86 FR 8267 (Feb. 5, 2021).

<sup>5</sup> Unaccompanied noncitizen children are unaccompanied children who do not hold valid travel documents and who are encountered by the U.S. Department of Homeland Security (DHS) in the United States or otherwise upon introduction into the United States. CDC understands "unaccompanied noncitizen children" as the class of individuals subject to the PJES litigation ("all unaccompanied noncitizen children who (1) are or will be detained in U.S. government custody in the United States, and (2) are or will be subjected to expulsion from the United States under the CDC Order Process"). It is also CDC's understanding that this class of individuals is similar to or the same as those individuals who would be considered "unaccompanied alien children" for purposes of HHS Office of Refugee Resettlement custody, were DHS to make the necessary immigration determinations under Title 8 of the United States Code.

<sup>6</sup> See 85 FR 65,806.